Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 95-20
Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services	)	
	)	
1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements	)	CC Docket No. 98-10

COMMENTS OF THE COMMERCIAL INTERNET EXCHANGE ASSOCIATION

COMMERCIAL INTERNET EXCHANGE ASSOCIATION

Robert D. Collet
Chairman of the Board
Commercial Internet eXchange Association

Barbara A. Dooley
Executive Director
Commercial Internet eXchange Association

Ronald L. Plesser
Mark J. O'Connor

Piper & Marbury L.L.P.
Seventh Floor
1200 Nineteenth Street, N.W.
Washington, D.C. 20036
202-861-3900

Its Attorneys

March 27, 1998

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 95-20
Computer III Further Remand	)	
Proceedings: Bell Operating	)	
Company Provision of Enhanced	)	
Services	)	
	)	
1998 Biennial Regulatory Review --	)	CC Docket No. 98-10
Review of Computer III and ONA	)	
Safeguards and Requirements	)	

COMMENTS OF THE COMMERCIAL INTERNET EXCHANGE ASSOCIATION

The Commercial Internet eXchange Association ("CIX"), by its attorneys, files these comments in response to the Further Notice of Proposed Rulemaking ("FNPRM") of the above-captioned dockets. CIX is also expressly authorized to report that the four Internet Service Provider Organizations, listed on Attachment 1 hereto, also support and join in on these comments. CIX is a trade association that represents over 150 Internet Service Providers who handle over 75% of the United States' Internet traffic.[1] CIX works to facilitate global connectivity among commercial Internet service providers ("ISPs") in the United States and throughout the world.

Introduction and Summary

CIX believes that it is now more important than ever for the Commission to maintain its Computer Inquiry goals for a fully competitive information service market. In light of the

---

1 The views expressed herein are those of CIX as a trade association, and are not necessarily the views of each individual member.

Telecommunications Act of 1996 (the "1996 Act"), the record already compiled two years ago in this proceeding, the RBOCs' aggressive entry into the Internet services business, and the California III remand order,[2] the Commission should act expeditiously to ensure that ISPs have efficient and equal access to the incumbent LEC's telecommunications.

CIX proposes that the Commission adopt a three-point approach to ensuring a vigorous and competitive ISP industry. *First*, ONA standards must be strengthened and made consistent with "fundamental unbundling," as already implemented pursuant to the Section 251 unbundling requirements of the 1996 Act.[3] "Pure ISPs" should not be forced to become a regulated CLEC in order to obtain useful UNEs.[4] *Second*, the Commission should adopt rules that enable ISPs to collocate in a practical fashion as the RBOCs deploy xDSL and other telecommunications technologies. Without collocation, the ISP affiliated with the Bell Operating Company or GTE[5] obtains a technical and market advantage that is antithetical to the policies of Computer Inquiry. *Third*, on the issue of structural separations, the Commission should adopt a plan akin to the LCI "Fast Track" Model of structural separations: the RBOC's retail interests in its inter/intraLATA information service business would be significantly divorced from its interests in selling local network services. In this way, the threat of discrimination and cross-subsidization can be reduced and the complex regulatory issues of intraLATA and interLATA information services would be simplified.

---

2 California v. FCC, 39 F.3d 919 (9th Cir. 1994), cert. denied, 115 S. Ct. 1427 ("California III").

3 CIX notes that the Commission itself acknowledges that the "fundamental unbundling" required by the Ninth Circuit is substantially equivalent to the UNE unbundling required by Section 251 of the Act. FNPRM at ¶ 31.

4 According to ¶ 32 of the FNPRM, a "pure ISP" is an entity "that provide[s] solely information services."

5 In these comments, CIX will refer to the Bell Operating Companies and GTE collectively as the "RBOCs."

Discussion

I. Subsequent Events Have Heightened the Need For Fundamental Unbundling of RBOCs' Networks and For More Functional Competitive Safeguards

The Commission seeks comment on "whether the enactment of and implementation of the 1996 Act, as well as other developments, should alleviate the Ninth Circuit's underlying concern about the level of unbundling mandated by ONA." FNPRM at ¶ 29. In CIX's view, this proceeding should make *progress* on the Commission's evolving ONA policies by providing ISPs with rights to fundamental unbundled network elements ("UNEs"), such as unbundled local loops.

Stronger ONA builds on the Commission's policies for a more vibrant information services market. As the Commission has often held, ONA prevents anti-competitive and discriminatory behavior by the RBOCs against independent ISPs. In addition, as the Commission noted in the 1990 ONA Remand Order, ONA serves the public interest because it allows ISPs to make more efficient use of the LEC network:

> A major goal of ONA is to increase opportunities for ESPs to use the BOCs' regulated networks in highly efficient ways, enabling them to expand their markets for their present services, and develop new offerings as well, all to the benefit of consumers . . . promotion of efficient use of the network is one of the primary goals of the Communications Act.[6]

CIX wholeheartedly agrees with this vision of ONA, and nothing in the 1996 Act "alleviates" the need to continue these ONA policies.

In fact, the case for fundamental unbundling under ONA has only grown more compelling in recent years. Both the California III decision and the record compiled in the Commission's Further Remand Proceeding demonstrate that RBOC discrimination is a reality

---

6 In the Matter of Computer III Remand Proceedings, Report and Order, 5 FCC Rcd. 7719, 7720 (1990) ("ONA Remand Order"), aff'd, California v. FCC, 4 F.3d 1505 (9th Cir. 1993).

that must be addressed in ways, including ONA, that ensure a competitive market. The RBOCs' own recent and aggressive entry into the ISP markets also heightens the need for ONA principles that ensure that "pure ISPs" have access to the necessary UNEs to compete in today's market with other providers that are facilities-based (i.e., CLECs, ILECs). Finally, the concerns that led the Commission away from "fundamental unbundling" under ONA in 1991 are today no longer extant. The provision of UNE's to ISPs is today technically feasible and greatly in demand.

A. The California III Remand and the Further Remand Proceeding Demonstrate That the Commission Must Do More to Safeguard ISP Competition

Significantly, the Commission acknowledges that it has not yet answered the Ninth Circuit's 1994 remand order partially vacating the BOC Safeguards Order.[7] In California III, the Court found that the FCC had set out "fundamental unbundling as a key safeguard against access discrimination,"[8] and yet the "apparent retreat" from enforcement obligations of ONA had "failed to prevent the BOCs from engaging in discrimination against competing ESPs in providing access to basic services." FNPRM at ¶ 15. Thus, the Commission has a continuing obligation to the Court to implement its policies for "fundamental unbundling," or to offer good reasons why it has decided to change its policies.

In the Commission's 1995 Further Remand Proceeding, the record demonstrated that ILEC anti-competitive conduct has not subsided. A number of commenters, including CIX, presented comments and evidence demonstrating that the anti-competitive conduct by the RBOCs is alive and well, to the detriment of the independent enhanced service industry and the public at large. Indeed, the economic analysis of the Hatfield Associates demonstrates that the anti-competitive RBOCs' service offerings and network deployment decisions are

---

7 6 FCC Rcd. 7571 (1991) (subsequent history omitted).

8 California III, 39 F.3d at 930.

economic and strategic decisions.[9] The comments of independent market participants also provided real world proof of RBOC anti-competitive conduct and access discrimination. The fact that *all* non-BOC providers in the remand proceeding argued for structural separations is itself evidence that access discrimination is a widespread industry problem. In addition, the comments of MCI, Compuserve, ITAA, and ATSI provided a litany of cases of BOC access discrimination and anti-competitive conduct.[10]

U.S. West's actions in 1997 to remove LADS service offerings in 12 of its 14 in-region states further exemplifies this anti-competitive conduct. The LADS service offered an unbundled copper loop from the independent ISP to the US West customer which could be used for xDSL data communications; it also routed around the PSTN switch to avoid the much talked-about PSTN congestion problem. Coincident with US West's roll-out of its own xDSL offering, however, it filed to remove the LADS service offering in 12 of its 14 in-region states, and so deprive ISPs of the ability to compete with US West's offering. In the words of the Editor of Boardwatch Magazine, US West's action against ISPs was "one of the most viciously anti-competitive acts we've seen from regional Bell operating companies."[11]

For these reasons, CIX respectfully submits that the public interest is not served by retreating from ONA and other competitive safeguards against RBOC discrimination. Rather,

---

9 "ONA: A Promise Not Realized -- Reprise," Hatfield Associates, Inc., CC Docket No. 95-20 (filed April 7, 1995).

10 Comments of MCI, CC Docket No. 95-20, at 33 - 38 (filed April 10, 1995) (catalog of BOC anti-competitive abuses); Comments of Compuserve, Inc., CC Docket No. 95-20, at 36 - 49 (filed April 7, 1995) (examples of access discrimination); Comments of the Information Technology Association of America, CC Docket No. 95-20, at 48 - 51 (filed April 7, 1995) (examples of access discrimination); Comments of the Association of Telemessaging Services International, Inc., CC Docket No. 95-20, at 6 (filed April 7, 1995).

11 Jack Rickard, "You, Me, and Computer III - the xDSL Rosetta Stone," (March, 1998) at <http://www.boardwatch.com/mag/98/mar/bwm1.html>.

ONA should be strengthened, as described herein, to allow ISPs to make more efficient use of the PSTN.

B. The Competitive Telecommunications Marketplace Has Encouraged the RBOCs to Take a Heightened Stake in the ISP Market

In the past two years, the RBOCs have uniformly entered the Internet and other information service marketplace in a significant way. As the RBOCs seek out new footholds for exploitation of their local exchange network in the face of anticipated competition, the Commission needs to complete and strengthen the ONA regime.

At the time of the Computer III and California III decisions, the RBOC "enhanced" or "information" services primarily entailed the provision of voicemail service and other telephony-oriented enhancements. Today, however, the RBOCs have aggressively moved into a broader range of information services, and especially Internet services. While RBOCs generally commenced Internet access within the past few years, all the RBOCs today aggressively feature and market their Internet services. The RBOCs have discovered the tremendous revenue stream to be captured from selling second lines to homes and businesses, or ISDN service, and packaging that data access with its own Internet service. As recently as last month, Bell Atlantic, US West, and Ameritech have all petitioned the Commission requesting deregulatory relief,[12] including forbearance from interLATA statutory restrictions, to launch massive end-to-end xDSL-based Internet services which may or may not provide access for competitive ISPs.

The ILECs' aggressive entry into information services is understandable in light of the fact that the 1996 Act may actually open competition to their existing monopoly services. Moreover, the Commission's Universal Service Fund and Access Charge Reform orders also threaten to undermine the BOCs' substantial access revenue streams. Over time, those

---

12 Petition of Bell Atlantic, CC Dkt. No. 98-11 (filed Jan. 26, 1998); Petition for Relief of US West, CC Dkt. No. 98-26 (filed Feb. 25, 1998); Petition of Ameritech, CC Dkt. No. 98-32 (filed Mar. 5, 1998).

proceedings are likely to continue to dismantle the preexisting subsidy scheme that had supported the inefficiencies of BOC's local exchange monopoly. While they continue to enjoy a *de facto* monopoly over local telecommunications services, the encroachment of alternative providers fortifies the RBOCs' motive and opportunity to dominate the ISP industry.

Without additional ONA opportunities for ISPs and additional competitive safeguards, the RBOCs' aggressive moves into the Internet will likely include even more deployment and access decisions that favor their own retail interests in the ISP market.

C. The UNE Obligations Implemented by the 1996 Act Demonstrate That the RBOCs Are Able to Provide "Fundamental Unbundling"

CIX respectfully submits that, in this proceeding, the Commission should provide ISPs with ONA unbundling that is technically and functionally equivalent to UNE obligations the Commission has required ILECs to implement pursuant to Section 251(c) of the Act. Indeed, for several reasons, ONA unbundling should now be made consonant with Section 251 UNE unbundling.

First, such an ONA obligation would serve the Commission's continuing ONA policies for an evolving level of unbundling. From its inception, the Commission required ILECs to unbundle "to the extent technologically feasible."[13] As the Ninth Circuit described it, ONA is intended to "enable enhanced service providers to pick and choose network service elements to design and develop enhanced services."[14] This standard is logically and technically indistinguishable from the ILEC's Section 251(c)(3) obligation to unbundle "at any technically feasible point." 47 U.S.C. § 251(c)(3).

---

13 Computer III Final Decision, 104 F.C.C.2d 958, 1065 (1986) (subsequent history omitted).

14 California III, 39 F.3d at 929.

With the implementation of the 1996 Act, the Commission already requires the ILECs to "fundamentally unbundle."[15] As ordered by the Local Competition Order, the RBOCs must unbundle to the extent technically feasible, including unbundled loops.[16] Significantly, commenting parties in that proceeding, including RBOCs, "supported [that] . . . the local loop is a network element that should be unbundled."[17] Unlike the network in 1988, the RBOCs implementation of an unbundling architecture as required by Section 251 is both specific and technically feasible. Developing and clarifying ONA so that ISPs have rights to purchase such UNEs is simply not a technical issue.

Thus, the Commission's reasons in 1991 for declining a more "fundamental unbundling" approach to ONA do not today support such a policy position. The Commission has recognized that a "more fundamental unbundling could be a socially desirable goal," and that "properly designed ONA networks should be characterized by efficient interconnections and unbundled offerings that will the limit the carrier's ability to engage in discrimination and be hospitable to the competitive offering of enhanced services."[18] The Commission declined to require "fundamental unbundling" in the initial ONA plans filed in 1988 primarily because "ONA based on a more disaggregated, and as yet unspecified, architecture would be extremely costly and disruptive," as compared to a "radical reconfiguration to a more

---

15 FNPRM at ¶ 31 ("the unbundling requirements imposed by section 251 and our implementing regulations . . . are essentially equivalent to the 'fundamental unbundling' requirements proposed by certain commenters. . .").

16 First Report and Order, CC Dkt. Nos. 96-98, 95-185, 11 FCC Rcd. 15499, 15640 (1996) (subsequent history omitted) (Section 251(c)(3) "imposes on incumbent LEC the duty to provide all network elements for which it is technically feasible to provide access on an unbundled basis.").

17 Id. at 15684.

18 BOC ONA Order-- Phase I, 4 FCC Rcd. 1, 5, 62 (1988) (subsequent history omitted).

modularized architecture."[19] Instead, the Commission has always held, even in the California III case, that ONA would be an evolving process.[20] Over time, the RBOC network would provide greater levels of ONA unbundling based on (a) the technical feasibility of the request, and (b) the demand for the particular network element.[21] Since UNEs are today the legal standard for unbundling, the technical concerns over "radical reconfiguration" have ended.

It is also beyond question that ISPs today would demand and make efficient use of the UNEs, especially unbundled loops to homes and businesses, in the provision of information services. More efficient access to the ILEC monopoly lines to customers would greatly improve ISPs' ability to offer innovative services to the American public. The Commission itself cites to examples of ISPs pursuing a business strategy to obtain unbundled loops from ILECs. FNPRM at ¶ 33.

Second, a single standard for unbundling would greatly simplify and improve the process for both regulators and regulatees. By contrast, the continuation of two separate standards -- one for ISPs and one for telecommunications carriers -- increases the volume of regulations and the costs of enforcement. Regulatees must similarly learn the differences, and fashion business decisions, between the two sets of regulatory paradigms. Arbitrage that increases transactions costs, but does nothing to enhance efficiency, will also prevail under a bipolar unbundling scheme. Thus, for no purpose other than to gain greater regulatory rights, some formerly "pure ISPs" would be encouraged to expend time and resources to partner with CLECs and others.

---

19 Id. at 62.

20 Indeed, the Commission's initial ONA approval order was prescient of the 1996 Act and today's Internet: "We recognize that the type of extensive unbundling advocated by Hatfield and others could, in the long term, have certain positive procompetitive effects in the enhanced service market as technology and regulatory policies evolve." Id. at 63-64.

21 BOC Safeguards Order, 6 FCC Rcd. at 7600.

Third, if the Commission adopts a dual standard for ILEC unbundling (one standard under Section 251 and a lesser ONA standard), that regulatory policy would only cause further instability and disparity in the ISP market. Currently, most CIX members and most of the 4,000 providers of Internet access service are smaller "pure ISPs" that are neither facilities-based nor affiliated with a telecommunications provider. As demonstrated by the 1997 CIX Internet Survey, a great many ISPs are small businesses.[22] Of the ISPs in the U.S. responding to the CIX Internet Survey, 64% had average gross revenues for the past three years of $1 million or less, and 91% of the ISPs have average total revenues for the past three years of $50 million or less. CIX Internet Survey at 1. Moreover, very small business ISPs are also the "pure play" participants, with 85% of very small businesses reporting that most of their revenues were derived from ISP services. CIX Internet Survey at 6. It is this great number of providers, and the low barriers to market entry (including regulatory), that have spawned such a competitive and innovative Internet market in the U.S. However, as larger ISPs cleave to telecommunications carriers (or create their own), then the small businesses that remain the "pure ISPs" will undoubtedly suffer under a regulatory unbundling scheme that provides them with fewer rights than larger competitors. CIX submits that this regulatory disparity would be bad policy for the Internet, and would disserve the Commission's obligations to promote market entry by small businesses and entrepreneurs into the information services market. 47 U.S.C. § 257(a).

For this same reason, CIX cannot agree with the conclusion of the FNPRM (at ¶ 33) that CLEC entry, as promoted through the 1996 Act, has lessened the need for ONA unbundling.[23] This conclusion contradicts the Commission's deregulatory design in

---

22 CIX "Internet Service Providers Survey," (March, 1997), *attached to*, Comments of the Commercial Internet eXchange Association, CC Dkt. No. 96-262, et al. (filed March 24, 1997).

23 Further, CIX does not agree with the conclusion of the FNPRM (at ¶ 35) that expanded interconnection has lessened the need for ONA. The Commission has expressly

Computer III: pure ISPs are not regulated because it encourages a greater number of competitors and a wider variety of services. For pure ISPs, the deterrent effects of costly and complex federal and state regulations are avoided: "the types of enhanced services they may provide is limited only by their entrepreneurial ingenuity and competitive market constraints. Services need not be artificially structured or limited so as to avoid transgressing a regulatory boundary."[24] Putting such providers at a regulatory disadvantage vis-a-vis those ISPs that join up with telecommunications carriers would frustrate that policy.

In addition, the ability of CLECs to enter the marketplace, and then offer telecommunications to ISPs, has been difficult at best.[25] RBOCs have denied CLECs reciprocal compensation when they exchange local traffic between an ISP and a local RBOC end user.[26] CLECs have had considerable difficulty obtaining collocation from the RBOCs, as required under Section 251(c)(3), especially when they seek to offer a competing data service, such as xDSL. No RBOC has yet been able to meet the Section 271 competitive checklist, which underscores their inability or unwillingness to open up the local loop for CLEC competition. Until CLECs can compete using open access as envisioned by the 1996 Act, it is premature for the Commission to speculate that CLEC offerings will act as a competitive substitute for ILEC access services. Until fulsome CLEC competition has

---

prohibited ISPs from collocating their equipment, and so such rights are of diminished value. "Expanded Interconnection with Local Telephone Facilities," Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd. 7369, 7414 (1992), vacated in part and remanded, Bell Atlantic v. F.C.C., 24 F.3d 1441 (1994); Second Reconsideration, 8 FCC Rcd. 7341 (1993).

24 Computer II Final Decision, 77 F.C.C.2d 384, 429 (1980) (subsequent history omitted).

25 In 1996, approximately 99.0% of local service revenues in the U.S. went to incumbent LECs. 1996 Trends in Telephone Service, Industry Analysis Div. -- CCB, at Table 9.1 (Feb. 1998).

26 See Request by ALTS for Clarification of the Commission's Rules Regarding Reciprocal Compensation for Information Service Provider Traffic, CCB/CPD 97-30.

arrived, it is entirely to premature to predict whether CLEC competition may one day lessen the need for effective ONA.

Finally, because CLECs are more likely to deploy in metropolitan areas, rather than in rural America, the opportunities for ISP access to UNEs via CLECs in such areas is limited. However, deployment of Internet services to rural Americans is a key goal of the 1996 Act which can be more readily achieved if ISPs in those areas could have direct rights to unbundled loops and other UNEs. 47 U.S.C. § 254(b)(2). Rather than making the growth of Internet services dependent on the ubiquitous deployment of competing telecommunications carriers, the Commission should provide ISPs with access to unbundled loops and let the Internet industry accelerate the deployment of creative Internet services.

II. FCC Must Provide ISPs With Functional Collocation

CIX believes that it is now necessary for ISPs to have collocation rights. While physical collocation may not be necessary in all cases, the Commission must ensure a functional collocation right for ISPs. There are at least two reasons why such collocation is now needed and in the public interest.

First, as discussed above, the Commission's ONA policies for efficient use of the network and avoiding access discrimination strongly favor providing ISPs with access to UNEs, including unbundled loops. In order to use such UNEs, however, ISPs will need to be collocated at the ILEC's central office facilities. Moreover, when ISPs can obtain unbundled loops, they can also redirect Internet traffic before it reaches the ILEC's ingress switch, and so allay the RBOCs' vocal concerns for Internet congestion on the PSTN.

Second, as the ILECs introduce xDSL access, the technical distance limitations inherent in such technologies require the Commission to establish functional collocation. As the Commission laid out over ten years ago, the purpose underlying the "equal access" standard adopted as part of CEI is to "require the basic service functions utilized by the carrier-provided enhanced service to be available to others on an unbundled basis, with

technical specifications, *functional capabilities*, . . . equal to those provided to the carrier's enhanced services."[27] Discrimination favoring the ILEC-affiliated ISP use of the local telecommunications network is contrary to the Commission's settled policies: "[w]e have long recognized that the basic network is a unique national resource, and our policies have been designed to promote nondiscriminatory utilization of that resource's capabilities."[28] The Commission declined to provide enhanced service providers with broad collocation rights because, at that time, it believed that equal access could be achieved in other ways and that "collocation merely reduces transmission costs, it does not address the more general issues of equal functionality . . . ."[29] Thus, under current FCC rules, independent ISPs are denied collocation at the ILEC office; however, the ILEC's Internet affiliate is able to collocate.[30]

In 1986, however, the Commission could not have anticipated the advent of xDSL technologies, and its inherent distance limitations. With xDSL, collocation becomes a very real issue of "equal functionality," and not simply an issue resolved through minimizing transport costs. Because of line attenuation issues, xDSL services can only be offered to customers that are within a wired radius of the ILEC office. For example, the ADSL Forum estimates that ADSL download speeds of 1.5 to 2 Mbps can only be offered to customers that are within a wired distance of 18,000 feet of an ADSL-equipped ILEC central office.[31]

Without collocation for all ISPs, the deployment of ADSL provides the RBOC's ISP affiliate with a competitive advantage over any other independent ISPs because the RBOC

---

27 Computer III Final Decision, 104 F.C.C. 2d at 1036 (emphasis added).

28 Id.

29 Id. at 1038.

30 Computer III Final Decision, 104 F.C.C. 2d at 1042.

31 ADSL Forum, "ADSL Tutorial: Twisted Pair Access to the Information Highway," at <http://adsl.com/adsl_tutorial.html>. See also Phillip Robinson, "DSL vs. The World," www.pccomputing.com 263, 265-66 (Jan. 1998).

affiliate's xDSL offering has a greater geographic reach to customers than that of all competitors in the same market. For example, assume that ADSL can be deployed only within 18,000 feet of a ILEC office, and that, due to the inability to collocate, the ISP's office is 5,000 feet away. (See Attachment 2, hereto). In such a market, only the ILEC's ISP-affiliate can serve the customers that are located in the range within 18,000 feet and more than 13,000 feet away from the central office. In that same geographic market, independent ISPs cannot serve the "ring" from 18,000 to 13,000 feet and so are denied ILEC telecommunications services to the same extent that is afforded the ILEC-affiliated ISP.

CIX emphasizes that the deployment of xDSL technologies *must be reconciled* with the Commission's long-standing policies favoring vibrant competition in the information services markets. Obviously, CIX prefers a practical solution to this issue -- a solution that gives all ISPs the same access to ILEC xDSL and that covers the same geographic market. Thus, CIX would prefer that ISPs have rights to physically collocate in the ILEC central office. However, CIX recognizes that such an arrangement may not be feasible in all cases because of space limitations and other parties with collocation rights. Therefore, if the ILEC can demonstrate a lack of collocation space for the ISP, CIX suggests that the Commission require the RBOCs to establish a neutral and reasonably close space to the central office, i.e., a "collocation motel."

III. Structural Separations Should Be Imposed For All RBOC Information Services

CIX believes that the Commission should apply, in concept, a structural separations standard to all RBOC information services (both intra- and interLATA) that is laid out by the LCI "Fast Track Plan."[32] As explained by LCI, an inherent conflict exists between an RBOC's motivations to sell network services to competing providers and the loss of retail

---

32 "Petition of LCI International Telecom Corp. for Expedited Declaratory Rulings," CC Dkt. No. 98-5 (filed Jan. 22, 1998).

RBOC business that occurs when competing providers enter the market. This inherent conflict also faces the RBOC as it competes in the information services business. Indeed, the record in the Further Remand proceeding is replete with examples of such anti competitive behavior: the RBOC essentially chooses its retail service business over the promotion of sales of network telecommunications to other ISPs. Without a logical separation that breaks the conflicting roles of the RBOC, CIX believes the anti competitive conduct is likely to continue to stultify the ISP market.

Therefore, CIX supports application of the LCI model to the RBOC's offerings of information services. In this way, the RBOC's network company, NetCo, would provide all ISPs the local network services to the end-user, including the RBOC's ISP-affiliate. With proper structural and ownership separations in place, NetCo would have little incentive to discriminate against ISPs. To the contrary, NetCo's business success would depend on its ability to attract independent ISP customers, to offer more responsive local data access solutions, and to compete against CLEC offerings. ServeCo, by contrast, would take NetCo's services on terms that are the same as any other ISP.

CIX believes that this plan would greatly reduce discrimination against independent ISPs, and would provide the RBOCs with more genuine and clear incentives to improve local access for data users. Moreover, CIX believes that this solution could apply to both interLATA[33] and intraLATA services offered by the RBOC. To the extent that it reduces regulatory obligations of the Non-Accounting Safeguards Order, the RBOCs receive some regulatory relief. More important, however, is that such a regime provides the RBOCs, the Commission, and the ISP industry with a stable and sensible plan for RBOC participation in the Internet regardless of LATA boundaries of the communication.

---

33 Of course, to provide interLATA ISP service, the RBOC would need to first obtain Section 271 approval.

Conclusion

CIX urges the Commission to continue to update its ONA policies to allow ISPS to create more efficient local data access solutions.

Respectfully submitted,

COMMERCIAL INTERNET EXCHANGE ASSOCIATION

Robert D. Collet
Chairman of the Board
Commercial Internet eXchange Association

Barbara A. Dooley
Executive Director
Commercial Internet eXchange Association

Ronald E. Plesser
Mark J. O'Connor

Piper & Marbury L.L.P.
Seventh Floor
1200 Nineteenth Street, N.W.
Washington, D.C. 20036
202-861-3900

Its Attorneys

March 27, 1998

Commercial Internet eXchange Association Members
November 1997

@ Home
a2i Communications
American Communication Services
Apex Global Information Services
Aliant Communications
ANS CO+RE Systems
Ascend Communications
Ashton Communications (AICnet)
Asociados Espada
AT&T
AT&T Jens Corporation
ATMnet
Atson, Inc.
BBN Planet
Bekkoame Internet, Inc.
British Telecom
Cable & Wireless Internet Exchange
Centnet
CERFnet
Comnexo
Compuserve
CR Internet
CRL Network Services
Crocker Communications
CTS Network Services
Cybergate, Inc.
Dart Net Ltd.
Data Research Associates, Inc.
DataXchange
Datanet Communications Ltd.
Demon Internet Limited
Digital Equipment Corporation
Digital Express Group
Dimension Enterprises
DirectNet Corporation
E-Z Net
easynet DV GmbH
Easynet Group Plc
Electronic Systems of Richmond, Inc.
Emirates Telecommunications
EPIX
Epoch Networks Inc
Eskimo North
EUNet BV
EuroNet Internet BV
Exodus Communications
Fiber Network Solutions, Inc
Fibrcom, Inc.
Fujitsu Limited
Genuity, Inc.
GetNet International
Global One
Global Center
GoodNet
GridNet International
GST Internet, Inc.
Hitachi
Hong Kong Supernet Limited
Hookup Communications Corp.
Hewlett Packard
Hurricane Electric
I-2000
IBM Global Network
ICon CMT
i-Pass
Inet, Inc.
InfoCom Research Inc.
Intermedia Communications Inc.
Internet Bermuda Limited
Internet Corporativo, SE de CV
Internet Exchange Europe
Internet Initiative Japan (IIJ)
Internet Prolink SA
Internet Public Access
Interpath
Interserve Communication (H.K.) Ltd.
IPF.Net International
ITnet SpA
IUnet s.p.a.
JC Information Systems
JTNET Research Institute
Kokusai Denshin Denwa, (KDD)
Korea Telecom
Lafitte, Morgan & Associates
LDS I-America
Logic Telecom S.A.
Logical NET Corp. (Micros)
MCI Telecommunications
MediaOne
Mikrotec
MIND (Mitsubishi Electric Network Information Co.)
Minnesota Online
Nacamar Data Communications GmbH
NEC Corporation
Netcom
NetDirect Internet
netINS, Inc.
NETRAIL
NetVision
Netway Communications
New York Net
Novia Internetworking
Octacon Ltd.
On-Net
Osaka Media Port Corporation
OSI de Guatemala, S.A.
OTSUKA SHOKAI Co.,Ltd
Pacific Bell Internet
Pearl Vision
Pilot Net Services
Planet Online Ltd.
PSINet
Qwest Communications
RACSAnet
Renater
Rapid Systems, Inc.
Red Creek Communications
Singapore Telecom
SOVAM Teleport
Sprint
Sun Microsystems
Synergy Communications
Tchui Data, Ltd.
Telecom Finland
Teleglobe, Inc
Telewest Communications, Ltd.
The Internet Mainstreet (TIMS)
TheOnRamp Group, Inc.
Thoughtport
Threeweb Corporation
TogetherNet
Tokai Internetwork Council
Tokyo Internet Corporation
Total Connectivity Providers
Toyama Regional Internet Organization
U-NET Ltd.
USIT United States Internet, Inc.
UUNET PIPEX
UUNET Technologies
USAGate
VBCnet (GB) Ltd
VoiceNet
Voyager Networks, Inc.
Web Professionals
WebSecure
Verio

ATTACHMENT 1

ARIZONA INTERNET ACCESS ASSOCIATION

David Jemmett, President
Tel: (602) 303-9500
Email: jemmett@good.net

FLORIDA INTERNET SERVICE PROVIDERS ASSOCIATION

Joseph Marion, Executive Director
1045 East Atlantic Avenue
Suite 206
Delray Beach, Florida 33483
Tel: 561-266-9438
Fax: 561-266-9017
Email: jmarion@ix.netcom.com

INTERNET PROVIDERS ASSOCIATION OF IOWA

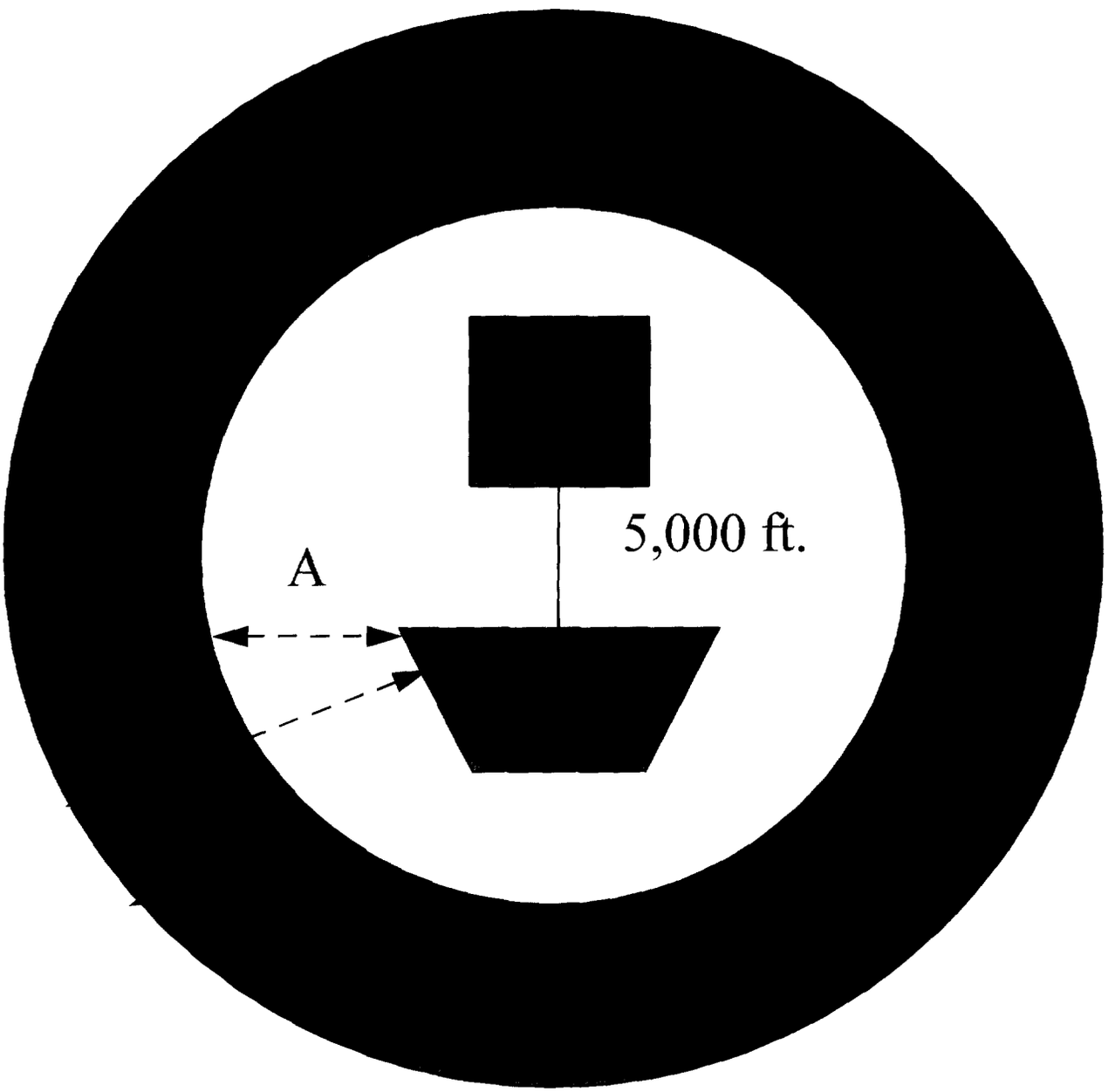
Michael S. Eggley, President
4201 Corporate Drive
West Des Moines, IA 50266
(888)-880-4724

INTERNET SERVICE PROVIDERS' CONSORTIUM

Charles T. Smith, Jr., President
charles.smith@ispc.org
(770) 934-6033, ext. 2902

Deborah Howard
Chair of the Board and Executive Director
deborah.howard@ispc.org
(310) 827-8413 or (310) 448-1680

Attachment 2
ADSL and the Collocation Issue



A = The radius that non-collocated independent ISPs may use ADSL to connect to customers (e.g. 13,000 ft.).

B = The radius that the collocated ILEC-affiliated ISP may use ADSL to connect to customers (e.g. 18,000 ft.).

C = The region of the market in which the ILEC-affiliated ISP would enjoy exclusive access to customers via ADSL.